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10 DOWNING STREET

From the Private Secretary

16 April 1985

Review of the Vienna Convention

The Prime Minister has considered the Foreign and Commonwealth Secretary's minute PM/85/27 of 15 April covering the text of a Command Paper dealing with the outcome of the Review of the Vienna Convention and the Government's reply to the Foreign Affairs Committee Report on diplomatic immunities and privileges.

The Prime Minister is content for the White Paper to be published as proposed on 24 April.

I am sending copies of this letter to the Private Secretaries to the Home Secretary, the Lord Chancellor, the Attorney General and the Financial Secretary to the Treasury.

(C.D. Powell)

L.V. Appleyard, Esq.,
Foreign and Commonwealth Office.

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Prime Minister

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The Foreign Secretary's minute summarizes the draft White Paper. The particular points for you to consider are:

(i) diplomatic bags. The Foreign Secretary concludes that we cannot propose searching or scanning because of the implications for the sensitive material and equipment in our bags.

PM/85/27

PRIME MINISTER

Review of Vienna Convention and Reply to Foreign Affairs Committee Report on Diplomatic Immunities and Privileges:

Command Paper

ii) parking. Governments will be asked to withdraw persistent non-payers of parking fines.

1. On 1 May 1984, in the aftermath of the shooting of WPC Fletcher outside the Libyan Peoples Bureau in St James Square, I told the House that I had set in hand a full Review of the Vienna Convention, its operation and enforceability. I also said that I would welcome the views of the Foreign Affairs Committee.

Agree the White Paper may be published?

2. The Foreign Affairs Committee published their Report on "The Abuse of Diplomatic Immunities and Privileges" on 23 January 1985. It covers similar ground to our own Review. I have therefore had a single Command Paper prepared embracing both the outcome of our Review and our considered Reply to the Foreign Affairs Committee.

CDP - 15/4

Yes no

3. I have now agreed a text of the Command Paper with the Home Secretary. It has also been cleared with other Departments represented on the Official Committee on Immunities and Privileges. I enclose a copy. I propose to publish this on 24 April.

4. The summary of conclusions is at paragraph 85. As this makes plain, we have been able after a very thorough review to accept all the major recommendations of the Foreign Affairs Committee.

5. We have already implemented a firmer policy towards application of the Vienna Convention. Our requirements in many areas have been revised and our procedures tightened.

/We

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We have told the Diplomatic Corps that we are expecting more stringent standards of behaviour. We have as you know taken the initiative to secure closer international cooperation, particularly on international terrorism.

6. On more detailed points, we are scrutinising more rigorously new notifications of staff appointed to diplomatic Missions in London. We have limited the size of certain Missions and will continue to do so on a case by case basis. We have taken steps to limit the extent of diplomatic premises and are withdrawing diplomatic status from the small number of separate Tourist Offices that have previously held it. This will bring us more into line with international law and practice, though could entail some risk to British interests through retaliation. We have given careful consideration, in consultation with our posts, to the difficulties that might arise in each particular case and will be doing all we can to head off any trouble. We also envisage legislation to give us the power to acquire and dispose of diplomatic premises in certain exceptional circumstances.

7. The Home Secretary and I have looked particularly closely at the sensitive issue of diplomatic bags. We have concluded that the scope for significant new policies to control abuse is limited, given the reciprocal implications for the security of our bags. We would not be able to accept scanning or scrutiny of our own bags, which as you know carry highly classified and very sensitive operational equipment and we cannot therefore take these steps against the bags of other countries except in extreme circumstances, as in the Dikko case.

8. The difficulties were recognised by the Foreign Affairs Committee and it would not be right to go beyond their own recommendations. We have however tightened our control on the identification and handling of diplomatic bags. And we have made it plain that we would of course take action in special circumstances where abuse occurs or there is good reason to /suspect



suspect it.

9. We have introduced more stringent criteria for dealing with offences by individual diplomats and have drawn up a guidance memorandum for distribution to all concerned. We are taking tougher action on illegal parking by diplomats through a scheme that will involve requesting the withdrawal of persistent offenders. This may well attract the greatest public attention of any of these measures, as well as adverse reactions from sections of the Diplomatic Corps. Our aim is to reduce significantly the number of offences in this area from the present unacceptable level of over 100,000 a year.

10. I am encouraged that we have achieved such a large measure of common ground with the Select Committee. We have taken a number of practical measures. Where we decided against more sweeping action, the reasons are fully set out in the White Paper. Overall, I believe we now have a considered and coherent policy, which is in a number of respects tougher than previously. We shall do all we can to ensure that this message gets across, both to the Corps who are being notified of the new position by circular, and publicly.

11. I propose to publish the White Paper on 24 April, and to arrange for a letter to be sent to the Diplomatic Corps on 19 April about the new criteria for dealing with parking offences. Sir Antony Acland will write separately on 23 April to remind Heads of Mission of all circulars now in force and to enclose a memorandum of guidance to be given to each new diplomat on arrival in this country.

12. I am sending copies of this minute together with a text of the revised White Paper to the Home Secretary, the

/Lord

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Lord Chancellor, the Attorney General and the Financial
Secretary of the Treasury.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

GEOFFREY HOWE

Foreign and Commonwealth Office

15 April 1985

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MAIN POINTS FROM THE WHITE PAPER

- * The Government are determined to restrict abuse of diplomatic immunity and to deal with it severely when it occurs. They have conducted a thorough review of all the legal and practical possibilities for action.
- * All the major recommendations of the Foreign Affairs Committee have been accepted.
- * New elements of international cooperation, particularly in the area of terrorism, are in operation.
- * A firmer policy towards application of the Vienna Convention has been implemented.
- * The Government's requirements and procedures have been tightened. Stricter standards are being applied, in particular on:
 - size of diplomatic Missions;
 - notification of new staff;
 - use of diplomatic premises;
 - handling of diplomatic bags;
 - breaches of criminal law;
 - illegal parking.

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DIPLOMATIC IMMUNITIES AND PRIVILEGES

Government Report on Review of the Vienna Convention on Diplomatic Relations and Reply to "The Abuse of Diplomatic Immunities and Privileges" - the first Report from the Foreign Affairs Committee in the Session 1984-85

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INTRODUCTION

1. In his statement to the House of Commons on 1 May 1984 the Secretary of State for Foreign and Commonwealth Affairs said that he had "instituted a full Review of the Vienna Convention, its operation and enforceability" and that he would report the outcome of this Review to the House. He also indicated that he would welcome the views of the Foreign Affairs Committee. The Committee's Report on "The Abuse of Diplomatic Immunities and Privileges" was published on 23 January 1985. It includes records of the detailed evidence submitted to the Committee by the Foreign and Commonwealth Office.
2. The Government appreciate the valuable work of the Committee in illuminating areas of particular concern and welcome the Report. The specific conclusions and recommendations have been studied with care. The Government note that there is much common ground between the views of the Committee and their own conclusions.
3. This paper constitutes both the Government's Report on the Review of the Vienna Convention on Diplomatic Relations and also their considered reply to the Report of the Foreign Affairs Committee.

/General Scope of the Review

General Scope of the Review

4. The commitment to undertake the Review was given in the aftermath of the events outside the Libyan Peoples Bureau in St James's Square on 17 April 1984. It received added impetus from the events relating to the attempted abduction of Mr Umaru Dikko on 5 July 1984. Wider questions concerning immunities and privileges arose out of evidence considered by the Foreign Affairs Committee. The abuse of diplomatic immunity has caused serious and legitimate public concern, and particularly when it leads to acts of terrorism.
5. Given this context the Government set itself the following specific objectives:
- (a) to examine the Articles of the Vienna Convention, and in particular those relating to immunity and inviolability; and to consider whether it would be (i) desirable and, if so, (ii) practicable either to propose amendments of the Convention or to apply more stringently any of its existing provisions in ways which would help to prevent abuse and at the same time be consistent with HMG's overall interests;
 - (b) to seek international support for any measures that may be desirable and practicable to improve the operation and enforceability of the Vienna Convention.
6. The Government accept the Committee's observation that the events involving the Libyan Peoples Bureau and the attempted abduction of Mr Umaru Dikko have not been the only source of concern about diplomatic immunities and privileges in the UK, merely the most serious (para 5 of their Report). Thus, while taking full account of the lessons learnt from these events, we have decided to take a wider and forward-looking approach.

7. The Government have studied the provisions of the Vienna Convention in relation to two broad categories of abuse;

- (a) deliberate abuse of the diplomatic bag, diplomatic premises or diplomatic status for activities of a terrorist or political nature;
- (b) incidental abuse covering matters of a more personal nature, in particular breaches of the criminal law.

8. The main areas of difficulty, some of which have only arisen in acute form since the Vienna Convention was drawn up in 1961, include:

- (a) the opportunity for members of diplomatic missions to take advantage of their immunity to carry out, or escape prosecution for, serious criminal activities extending even to terrorism;
- (b) the freedom of sending states to appoint members of diplomatic missions and thus to provide diplomatic cover for persons not carrying out legitimate diplomatic functions;
- (c) reliance on diplomatic immunity for relatively petty offences often unrelated to any perceived function of a diplomatic mission;
- (d) more cars and more traffic congestion which has led to a proliferation of driving and parking offences for which immunity is claimed;
- (e) the constraints on receiving states in applying the main sanctions that exist in the Vienna Convention in dealing with or preventing abuse.

/Amendment

Amendment of the Vienna Convention

9. The Government have studied the views of the Committee on the desirability and practicability of seeking to amend the Vienna Convention in specific cases of abuse (paras 53-57). This would alter the balance between immunities and obligations. Existing obligations include the duty of all persons enjoying privileges and immunities to "respect the laws and regulations" of the receiving state (Article 41.1). Any change that strengthened this provision and enabled receiving states to enforce their own laws in respect of foreign diplomats could be valuable in dealing both with state-sponsored terrorism and more petty abuses. It could also however mean a corresponding reduction in the protection given to the personnel and facilities of sending states. This could bear hardly on states that generally abide by the existing rules and lead in some cases to unjustified harassment. It could also restrict the ability of Governments, acting on behalf of their country and its citizens, to carry out legitimate business overseas.

10. Moreover the Vienna Convention is a codification of international law and practice going back many hundred years which was re-examined carefully by the international community before it was agreed in 1961. As such it is almost universally respected. 145 states have become parties. The 1964 Diplomatic Privileges Act gave effect to it in the UK. Those very few states which are not parties give general effect to its terms. In practice it has become the modern customary law so that termination of our acceptance of the Convention (even if legally possible) would leave us in substantially the same position. It has provided a framework which is explicit and clear in many respects but nevertheless leaves room for common sense in its detailed interpretation and application.

/11.

11. We have made extensive international soundings on the feasibility of amending the Vienna Convention through renegotiation. There is a widespread consensus that attempts to do so would not succeed. They could in fact create more problems than they would solve by opening up issues on which disagreements could surface and thrive. Given the ambiguities and grey areas, the process would be complex and time consuming and would lead to a very confused position until the great majority of states accepted any amendments by ratification. We have therefore agreed with the Committee's conclusion that:

"Given the difficulties in the way of achieving any restrictive amendment to the Convention, and the doubtful net benefit to the UK of so doing, it would be wrong to regard amendment of the Vienna Convention as the solution to the problem of abuse of diplomatic immunities. Accordingly, the Government are right not to concentrate on amendment of the Convention as a major element in new policies to restrict abuse of immunities".

.....
/UK Objectives

UK Objectives

12. In view of the difficulties and the risks of seeking to open up the Vienna Convention for amendment the Government have concentrated on examining areas of action within the existing framework:

(a) creation of a climate of opinion that will help prevent abuses of diplomatic immunity and lead to firm action being taken against offending states or individuals, eg through agreed declarations in international bodies and through the development of common practices;

(b) work on new international rules to clarify and, where appropriate, to develop certain provisions in the Vienna Convention;

(c) strict application of the existing provisions of the Vienna Convention;

(d) introducing restrictive but legally justifiable interpretations of specific provisions of the Vienna Convention where required.

These areas of action are not mutually exclusive; they form part of a continuous process. Our main objective in pursuing specific policies has been, and will remain, to prevent abuse while protecting the overall interests of the UK as both a receiving and sending state.

/Methods

Methods

13. Under these broad headings the following action has been taken or is in hand:

(a) International climate of opinion and practice

- (i) Britain has played a leading role in international bodies, including particularly the Ten, to increase cooperation among like-minded Governments to prevent abuses of immunity for terrorist purposes. Apart from the Ten, we have taken action in the London Economic Summit Seven and the Council of Europe. We have also raised the question in the United Nations General Assembly and (at official level) the Commonwealth. These initiatives led to the Summit Seven Declaration on International Terrorism of 4 June 1984 and the Agreement of 11 September 1984 by Foreign Ministers of the Ten (endorsed by the European Council on 4 December 1984) on coordinated measures designed to combat terrorism and the abuse of diplomatic immunity.
- (ii) New elements of practical and useful cooperation are now in operation. These include exchanges of relevant information on diplomats and on other security measures. They also include a commitment to common and rigorous practices on matters such as the notification of staff, the size of diplomatic missions and the use of diplomatic premises. Work by the Ten on this subject continues. Bilateral exchanges have also taken place with other Governments with a view to creating a broader spectrum of support for the kind of measures agreed by the Ten. We are playing a full part in the work being carried out in the Council of Europe to follow up the resolution on terrorism and international organised crime which was adopted in May 1984 by the

/Council

Council of Europe Ministers of Justice. The Government appreciate the Committee's welcome and support for the efforts made to seek close cooperation amongst Western Governments and for the progress so far achieved (para 119). We will continue to press for further improvement in international cooperation in the whole field of terrorism and in particular to deal with the abuse of diplomatic immunity for terrorist ends;

(b) New international rules

The International Law Commission are currently considering new Articles on the status of the courier and the diplomatic bag. This could lead to international agreement on the development or modification of Article 27 of the Vienna Convention. The Government have ensured that our concerns over abuse of the diplomatic bag are fully taken into account in these deliberations. Where opportunities exist in other areas we will also work for appropriate modifications to restrict abuse of immunities..

(c)&(d) Administration of Vienna Convention

Although some progress can be, and has been, achieved through the processes described at (a) and (b) above, the main action must lie in administrative measures by the UK as receiving state to control the operation and enforcement of the provisions of the Vienna Convention. We have considered whether it would be right to adopt a different general approach, which could in turn require a larger administrative structure (including additional staff, finance and the support of computer systems) or whether a tighter code of practice can be implemented without additional administrative costs. Our general conclusions on this are set out below.

/General

General interpretation and application of the
Vienna Convention

14. The Committee have stated that a firmer policy towards application of the Vienna Convention is the only effective weapon that the Government possess and should be strongly pursued (para 123). After a full review of the subject including the legal and practical possibilities, the Government have reached the same conclusion.

15. In pursuing a firmer policy, there are a number of important principles that will need to be respected:

(a) adherence to agreed international rules to which we subscribe. Therefore any administrative action to apply the Vienna Convention restrictively must have a sound legal basis;

(b) preservation of a balance between a general level of immunities for our functions overseas and an adequate means to enforce obligations on others in the UK. Therefore any administrative action we apply to others we must be prepared in principle to accept for ourselves. Our ability to protect British interests overseas could be affected by any limitations we impose as a receiving state. As the Committee recognise (para 56) the concept of reciprocity is crucial;

(c) application of the Vienna Convention consistently and on an equal basis. Section 3 of the Diplomatic Privileges Act 1964 gives power to withdraw privileges and immunities where it appears that those accorded to a British mission in a particular country or to persons connected with it are less than those conferred by the Act on the mission of that country or persons connected with it. Use of this power can be effective in some cases but it is best used selectively.

16. Political constraints will often apply in individual cases. The options for firmer action need to be kept under continuous review as circumstances change, and new areas of political abuse come to light. We have also carefully considered the possibility of introducing computer systems that could assist in the task of controlling the activities of the Diplomatic Corps in the UK. At present these are too costly in terms of money and manpower in relation to their likely effectiveness. But here too we shall keep the position under review.

17. On the basis of the above considerations a stricter application of the Vienna Convention has already been implemented. Details of the action taken are set out in the sections below. They cover notification of staff (paras 18-27), size of diplomatic missions (paras 28-32), diplomatic premises (paras 33-40), diplomatic bags (paras 41-56) and immunity of diplomats from jurisdiction (paras 57-73). A section on parking offences is also included (paras 74-80).

/Notification of Staff

Notification of Staff

18. The total number of persons in the UK entitled to diplomatic immunities and privileges over the past 10 years has remained fairly constant. We are not therefore facing a new problem involving an increase in numbers. Details are as follows:

(a) Numbers of staff entitled to full immunity from criminal jurisdiction

	1985 (Feb)	1979	1974
1. Diplomatic staff of diplomatic missions	2295	2247	1932
2. Diplomatic staff of Commonwealth Secretariat	43	43	27
3. High Officers of international organisations	10	8	9
4. Administrative and technical staff of diplomatic missions	2162	2796	2702
5. Consular officers and employees of Polish Consulate-General in London and Glasgow	14	13	8
	<u>4524</u>	<u>5107</u>	<u>4678</u>

(b) these figures do not include "members of the family forming part of the household" who, under Article 37 of the Convention, enjoy the same immunities and privileges (unless they are nationals of, or permanently resident in, the receiving State). The overall total of persons qualifying for full immunity, including /dependants

dependants, is estimated at around 15,000;

(c) in February 1985 a further 2712 enjoyed more limited immunities and privileges in respect of acts performed in the exercise of their duties or official functions, including 342 service staff of diplomatic missions, 1563 officials of (and certain other persons connected with) international organisations including the Commonwealth Secretariat and 807 Consular officers and employees.

19. Problems of abuse or attempted abuse arise mainly out of the interpretation of Article 7 of the Convention which states that "the sending state may freely appoint the members of the staff of the Mission", though this is partly circumscribed by the persona non grata provision in Article 9 and the provision in Article 11 that enables the receiving state to limit the size of a Mission. Particular problems include:

(a) notification as diplomatic staff of persons who should more properly be regarded as administrative and technical staff; and apparent disproportion in certain cases between diplomatic staff and administrative and technical staff;

(b) notification of staff (such as students and teachers) whose functions do not appear properly or fully to fall within those of a diplomatic Mission;

(c) imprecise definition of "members of the family forming part of the household";

(d) notification as administrative and technical staff, entitled to immunities and privileges, of persons originally appointed as locally engaged staff (whom we would treat as permanently resident and therefore not so entitled);

/(e)

(e) failure by missions to reclassify members of diplomatic or administrative and technical staff (or their dependants) who have become UK nationals or permanently resident, eg following marriage to British citizens.

We have also been concerned about the employment as locally engaged mission staff of persons who would not otherwise be permitted to stay and work in the UK. These include members of the service staff, eg chauffeurs and cleaners, who are thereby able to evade the enforcement of immigration rules.

20. Article 10.1 requires notification to the receiving state of new appointments and of the termination of the functions or status of persons entitled to immunities and privileges. Agrément is required in advance for Heads of Mission (except those from Commonwealth countries of which the Queen is also the Head of State). Other new appointments are notified to the FCO on arrival on a prescribed form. Each form has to be signed by the Head of Mission or, in certain cases, his designated nominee. These notification forms are scrutinised carefully by the FCO. Further information is sought or queries are raised with the mission concerned in about 1 in 5 cases.

21. Since the Vienna Convention contains no objective definition of staff categories, checks carried out after notification usually relate to questions of nationality, designation, residence or family status. Doubts about official status or duties are rarely apparent from the notification form and it is virtually impossible in most cases for the FCO to tell whether a person should more properly be described as a diplomat or as a member of the administrative and technical staff or indeed as a member of the mission at all. In certain cases we refuse to accept notifications and they are withdrawn by the mission concerned. The persona non grata sanction is exercised where there is good reason

to do so. Where appropriate we make use of our exchanges of information with European Community and other countries which have recently been increased.

22. There is a visa requirement for certain countries which enables prior checking to be carried out on those expecting to take up appointments in diplomatic and consular missions in the UK. If we had good reason to believe that any such person was likely to engage in unlawful activities he would be made ^{normally} persona non grata under Article 9 before arrival. This procedure has been followed in certain cases. A wider system of requiring prior notification would not be enforceable under the Vienna Convention (Article 10.2 provides for it only "where possible") and would be administratively cumbersome without necessarily providing useful information on which effective action could be taken. The visa requirement effectively provides advance notice in cases where it is most likely to be needed.

23. Missions are now asked to specify who a new arrival is replacing. If there is no such person, the mission is asked to explain the functions of the new appointee. Even if there were a previous incumbent we do not necessarily accept that he should automatically have a successor. The information also enables a double check to be carried out on the termination of appointments.

25. We have considered the possible merits of requesting curricula vitae in addition to those normally provided for Heads of Mission, Defence Attachés and Consuls heading Consular posts. We have studied the experience of one other country which has requested these for some years. * has never rejected any appointment on the basis of information in them. Our own experience (eg with Defence Attachés) suggests that the information given is likely to be sketchy and unrevealing. We have

/therefore

*The country concerned

therefore concluded that curricula vitae would be of no more than marginal benefit in identifying members or prospective members of diplomatic missions likely to engage in unacceptable activities. We will however be prepared to seek them in individual cases in respect of countries where political circumstances make it desirable.

25. Any notification of a person whose relationship to the new official is other than that of spouse or minor child is queried. The Vienna Conference tried, but failed, to reach agreement on a definition of "members of the family forming part of the household". Our practice is to accept children aged 18 or over provided they are clearly resident with the member of the mission (including students) and not engaged in employment on a permanent basis. In exceptional circumstances other relatives, eg dependent parents living with the member of the mission, are accepted. Our acceptance or rejection of a notification is not in itself conclusive of status. In doubtful cases it is for a court to rule on the status of a dependant should he for instance be accused of a criminal offence.

26. The Government have generally regarded all locally engaged staff as "permanent residents" of the UK and treated them accordingly for the administrative purposes of the Diplomatic Privileges Act 1964. Attempts made to classify as non-permanent residents those appointed or previously employed on a locally engaged basis are normally queried and often refused unless convincing evidence is provided that they should properly be regarded as overseas based. The status of locally engaged staff that come to our attention in connection with the immigration rules is also queried.

27. The Government's objective is to prevent abuse rather than deal with it after it occurs. In this spirit we have revised and strengthened our notification requirements and procedures, within the limits set by the Convention. These have been spelt out in detail and sent to Heads of Mission. They cover all the five points in para 19 above. In accordance with the views expressed by the Committee (paras 60-67) the FCO will take all practical steps to ensure that they have appropriate information, at as early a stage as possible, on all staff newly appointed to diplomatic missions in London.

/Size of Diplomatic Missions

Size of Diplomatic Missions

28. The Government have reviewed the practical and legal options available to limit the size of diplomatic missions under Article 11.1 of the Vienna Convention. This reads:

"In the absence of specific agreement as to the size of the mission, the receiving state may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving state and to the needs of the particular mission".

Two different approaches have been considered:

- (a) the development of a policy of applying ceilings across the board on all missions;
- (b) the limiting of the size of individual missions to levels we regard as appropriate to our relations.

29. We have over the past 15 years imposed ceilings on a number of diplomatic missions in London. But we have concluded that a general policy of restrictions cannot be justified. There has been no overall increase in the size of diplomatic missions in the UK in the past 10 years. The majority of them do not abuse their immunity and the level of unacceptable activities would not necessarily be reduced by imposing overall limits. Such a policy could make us vulnerable to reciprocal action, and retaliation against British missions overseas would almost certainly follow.

*We have concluded that

30. The Government accept the Committee's view of the need to be "significantly readier than in the past to use the power to limit the size of a mission in cases where there is cause for significant concern about the overall nature of the mission's activities" (para 59). * a case by case approach remains the most appropriate means of dealing with existing problems of abuse or potential abuse. The discretion to limit the size of individual missions has been extended in the past year in certain cases and will continue to be applied in the future where there are grounds for doing so and British interests will not be at undue risk. Account has to be taken of the general state of, and likely impact on, bilateral relations with the country concerned and the likelihood of retaliation in some form. Where formal ceilings are already in force they will be rigorously applied.

31. There are no objective criteria for considering what might be regarded as a "reasonable and normal" size for a particular mission and for considering whether a limit should be imposed. We apply one or more of the following criteria:

(a) active involvement in espionage or terrorism, the two major categories of offence which clearly require exemplary action. In these cases those directly involved are expelled. Specific ceilings may also be imposed since the mission has no need for those "diplomats" whose activities are not properly diplomatic*.

(b) the pattern of behaviour of certain missions, or Governments, which suggest possible future involvement in unacceptable activities. In effect this means imposing, or possibly agreeing, ceilings before any offence or incident;

*A ceiling was placed on the Soviet Union in 1971 following the expulsion of 105 Soviet officials for "inadmissible activities";

(c) a numerical comparison between the size of a mission in London and that of a UK mission in the country concerned. This yardstick is not normally in itself sufficient to justify action without taking into account the reasons for any significant discrepancy. Diplomatic missions in London are in many cases larger than the corresponding British missions overseas. This reflects the particular importance of London as an economic, financial and political centre, including the Headquarters of various international commodity organisations. Moreover some missions use London as a base from which to cover other countries in addition to the UK.

In the light of these criteria and the wording of Article 11, we have reviewed the sizes of individual missions in London and are querying staff levels in certain cases with a view to obtaining a reduction in a number of ^{cases.} We will continue to pursue this approach.

32. It is preferable as a general rule not to publicise the imposition or details of specific ceilings on individual missions unless there is some special reason for doing so. In most cases public disclosure of a ceiling is likely to exacerbate already strained relations and be more likely to attract retaliation for reasons of public face. In some cases however the reasons for it can serve a useful purpose by showing up a particular type of activity as unacceptable or to deter others from practising it. We shall be ready to use it in any case where it is appropriate to do so.

/Diplomatic Premises

Diplomatic Premises

33. The ^{Government} have considered whether it would be possible, legally and practically, to exercise greater control over the premises of diplomatic Missions in London; whether limitations can be placed on their number, location or management; ^{and} whether specific measures can be taken to prevent or limit abuse.

34. Under Article 22 of the Vienna Convention on Diplomatic Relations not only are the premises of diplomatic Missions inviolable, but the receiving State has a special duty to take all appropriate steps to protect them. Similar provisions apply to the private residences of diplomatic staff (Article 30), and of administrative and technical staff unless they are nationals of or permanently resident in the receiving state (Article 37). Moreover, the receiving state should facilitate the acquisition of premises or otherwise assist the sending state in obtaining accommodation (Article 21). If diplomatic relations are broken, and even in the case of armed conflict, the receiving state is still required to respect and protect the premises of a Mission, though the sending state may entrust the custody of the premises to a third state acceptable to the receiving state (Article 45).

35. A further relevant factor is that under Article 23 "the sending state and the Head of Mission shall be exempt from all municipal dues and taxes in respect of the premises of the Mission, whether owned or leased, other than such as represent payment for specific services rendered". Article 1(i) of the Vienna Convention defines the premises of a diplomatic Mission as the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the Mission including the Head of Mission's residence. Under Articles 30, 34 and 37, the residences (in connection with their work for the Mission) of all diplomats and members of the administrative and technical staff and their families are given inviolability and rating relief.

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36. Claims for rating relief are made to the FCO with full details of the premises and a statement on the purpose for which they are to be used. Buildings for properties that we accept as constituting premises of the mission qualify for rating relief and are also regarded as having diplomatic status. They are therefore entitled to inviolability and protection. Some buildings or properties constitute diplomatic residences even if rating relief has not been sought, eg because it is the residence of a diplomat where rates have been included in the rent. Some, but not all, the addresses of these properties are made known to the FCO on the form notifying a diplomat's arrival.

37. The main concern relates to incidents of an unacceptable nature such as terrorist attacks or demonstrations that take place in or near diplomatic premises. Because of the immunity of the premises the police are unable to enter and search them for evidence of criminal offences including public order offences and illegal possession of firearms or explosives except with the permission of the Head of Mission or the diplomatic occupant. Apart from the risk of demonstrations or violent attacks the existence of diplomatic premises can also give rise to a number of lesser inconveniences, such as disregard of planning or public health legislation, general obstruction or parking offences in the immediate neighbourhood.

/38.

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38. Problems concerning diplomatic premises are often caused by the behaviour of the occupants but some can be related specifically to their number, location, general management or use. These are considered below:

(a) Number Of the 147 Governments in diplomatic relations with the UK, 132 have diplomatic missions resident in London. (In addition 18 of the 28 international organisations established in the UK have inviolable premises). Many missions have several separate office premises; the reasons for this include convenience for specific functions, cost and availability. Inviolability also applies to the individual residences of all diplomatic and administrative and technical staff;

(b) Location There is no power under British law to control the location of diplomatic premises and therefore no legal means of preventing missions from establishing premises in areas which might pose risks for security, public order or traffic and crowd control arising from demonstrations or other incidents. Existing planning permission procedures, which are administered by Local Authorities and subject to public enquiry and appeal, can only be used on planning grounds, ie land use and public amenity;

(c) Management Diplomatic Missions are expected to comply with UK laws and regulations concerning planning permission, listed buildings' consent and building regulations, and in practice most do so. However the management of empty premises, for instance after relations have been broken, can cause problems;

/(d)

(d) Use Premises of the mission are defined by the Vienna Convention as premises "used for the purposes of the mission" (Article 1(i)). The functions of a mission as described in Article 3 include "promoting friendly relations between the sending state and the receiving state, and developing their economic, cultural and scientific relations". A mission's functions can therefore cover wide and sometimes ill-defined areas of activity.

39. We are taking the following measures to tackle these problems:

(a) we will take appropriate administrative action in the event of abuse or suspected abuse, including withdrawal of diplomatic status from existing premises where they are not being used for purposes compatible with the legitimate functions of a mission. As a general rule we regard the following types of activity as being incompatible with the functions of a mission: trading or other activities conducted for financial gain (eg selling tickets for airlines or holidays, or charging fees for language classes or public lectures) and educational activities (eg schools or students' hostels);

(b) we have tightened the procedures on notification of the addresses and occupiers of all diplomatic premises, including residential properties. Normally we are notified of these addresses as part of a claim to rating relief and in that context they have always been carefully scrutinised. In the absence of legislation we cannot however stipulate that any premises or properties not so notified are not inviolable. Under the Vienna Convention the

status of premises depends on use for mission or residence purposes. A court would therefore recognise diplomatic status even without notification if it should be in issue in legal proceedings;

(c) we have considered whether any existing diplomatic premises are being used for purposes which, although in themselves legitimate and even Governmental in character, are not properly diplomatic as the term is understood in the Vienna Convention and international practice. In the case of separate Tourist Offices our application of the phrase "premises of a mission" may have been more generous than is strictly required by international law. Most other countries do not accord them diplomatic status. We therefore believe it is right in principle no longer to accord diplomatic status to separate Tourist Offices. With these *

*considerations in mind we intend to withdraw diplomatic status from the small number of Tourist Offices in London that currently hold it;

(d) the Government has under active consideration proposals for legislation to control in exceptional circumstances the acquisition and disposal of diplomatic premises in London. The proposals now under consideration would enable the Secretary of State for Foreign and Commonwealth Affairs:

(i) to require diplomatic missions to obtain his express consent before office premises acquired by them, or following a change of use, could be regarded as premises "used for the purposes of the mission", and therefore entitled under the Diplomatic Privileges Act to inviolability and rating relief;

/(ii)

- (ii) to provide that such consent could be withdrawn in respect of existing premises in certain circumstances and that the premises would then cease after a specified period to be premises of the mission (with consequent loss of inviolability and rating relief);
- (iii) to acquire the title, after a further specified period, of premises formerly used for the purposes of a diplomatic mission which the Government concerned refused to dispose of (with a view to selling the premises and remitting the proceeds to the foreign Government in question).

The Government regard these proposals as fully consistent with all their obligations under the Vienna Convention. We have made careful comparisons with laws and practice of other countries and in particular the United States Foreign Missions Act 1982;

(e) we have also considered whether new measures are required to prevent demonstrations disrupting the peace of diplomatic missions or impairment of their dignity (as required under Article 22), or becoming so provocative as to lead to violent incidents. The Government fully share the Committee's view (paras 45-52) that the United Kingdom's duty to protect the peace of diplomatic missions cannot be interpreted so widely that no demonstrations are allowed outside them. The Government also agree with the Committee that the essential requirements are that the work of the mission should not be disrupted, that mission staff are not put in fear, and that there is free access for both staff and visitors. How each demonstration is policed in order to ensure /that

that these requirements are met without undue infringement of freedom of speech is primarily a matter for the police. There are some 350 demonstrations a year outside embassies in London. In most cases the police keep demonstrators on the opposite side of the road from a mission so the question of Article 22 being breached seldom arises. But the practice varies in special circumstances (such as the holding of a function at the embassy). The police are the best judges in each case of the controls required: how to preserve the peace and dignity of a mission is essentially a matter of sensible policing practice rather than a question of law. Only rarely will consultation with the Home Office and the Foreign and Commonwealth Office be required, eg at time of increased tension. The police already have powers to deal with demonstrations and marches outside mission premises. These include their statutory powers under the Public Order Act 1936 to control marches which may result in serious public disorder and to prevent obstruction of the highway; and their common law powers to control numbers or to disperse an unlawful assembly when a breach of the peace has occurred or is reasonably apprehended. The general law of demonstrations is, however, being considered in the context of the public order review, whose conclusions the Government expect to announce shortly.

40. The Committee's suggestion (paras 125-126) that the liaison arrangements between the police, the Home Office and the Foreign and Commonwealth Office are inadequate was made specifically in the context of the change of policy towards demonstrations outside South Africa House. As the Committee correctly notes, this change of policy was decided independently by the Metropolitan Police and the Foreign and Commonwealth Office were not consulted. The police have agreed that in future they will consult the Home Office and the Foreign and Commonwealth Office before introducing any change of policy in relation to the policing of demonstrations outside missions. The policing of a demonstration on the day will continue to be left to the operational judgment of the police commander on the spot.

Diplomatic Bags

41. The Government share the concern expressed by the Committee on abuse of the diplomatic bag (paras 25-38). We have carefully considered measures that might be taken to prevent such abuse. In particular we have examined whether it would be desirable and if so practical to seek international agreement for restrictions on the use of the bag and to introduce scanning.
42. Article 27.4 of the Vienna Convention states that a diplomatic bag "may contain only diplomatic documents or articles intended for official use". This phraseology is clearly open to wide interpretation. A restrictive revision or modification of the rules in the Vienna Convention on Diplomatic Relations would significantly improve our ability to reduce abuse of foreign diplomatic bags entering and leaving the UK. The parallel Convention on Consular Relations contains provision to enable a state suspecting that a bag contains illicit material to request that it be opened in the absence of an authorised representative of the sending state. If this request is refused the bag must be returned to its place of origin. This possibility of challenge and supervised search also existed for diplomatic bags in customary law before the Vienna Convention on Diplomatic Relations.
43. In the Government's view it is unacceptable that bags should be used to transmit items prohibited in UK law whether or not it is claimed that they may be "for official use". We do not accept for instance that weapons may be imported by bag since the use of firearms for personal protection of diplomats is not permitted in the UK. It could nevertheless be desirable in principle to seek a restriction that would in specific terms exclude from the bag a limited number of items whose unauthorised import or export does not conform to local laws and regulations, regardless of any claim that
- /they

they may be intended for official use. In the UK guns and explosives as well as narcotics would fall into this category. Under such a restriction, if a state had serious reason to suspect a bag contained any of these prohibited items, it could demand that it be opened or returned to the place of origin.

44. To be effective any agreed limitation on the use of the bag would have to carry with it the possibility of challenge. Even if no challenge were carried out, the very existence of a possible threat to do so could in itself be a deterrent against serious abuse. In practice any actual challenge could normally be expected to lead to the return to the sending authority of a suspect bag rather than agreement to submit to search.

45. The major difficulty would be the certainty of reciprocal action against British diplomatic bags with consequent prejudice to the security of our confidential correspondence and system of communications. Our bags could be put at indiscriminate risk of harassment and disruption while traffic by others in arms or drugs or other prohibited items would not necessarily be prevented. Even if it were reduced, there are other doubts about the practicality and effectiveness of a challenge and search provision. Diplomatic missions would not be deprived of their ability to acquire illicit items from other sources. Furthermore the limits of any action against suspect bags would be difficult to define. The simple opening of a bag, whether it be a hand held pouch or larger container, would be unlikely in itself to reveal the object of suspicion. Little practical purpose would be served if it could not apply to /packages.

packages within a bag at least to the point where the nature of its contents became clear. There would be risk of breaching other provisions in the Vienna Convention, eg Article 24 on the inviolability of archives and documents and Article 27.1 on permitting and protecting free communication.

46. Thus any formal restriction on the content or use of bags would have both advantages and disadvantages for the UK. Even if it were desirable to proceed in this way, we would not find easy or universal acceptance. There is widespread concern internationally to prevent improper use of the bag and a number of states are anxious about threats to their own security arising from it. But there is a marked reluctance to take any action that could endanger the security of communications. A particular difficulty is that many states see no objection in principle to the carriage of arms in diplomatic bags for personal defence. As the Committee have clearly recognised, the practical and procedural difficulties involved in securing a restrictive amendment are formidable.

47. This has not inhibited the Government from making plain its concern about abuse of the bag in a variety of international meetings and bilateral exchanges over the past year. The question has been, and remains, under scrutiny within the European Community. The International Law Commission (ILC), which was responsible for the preparatory work leading to the Vienna Convention, is currently considering new draft Articles on the status of the courier and the diplomatic bag. It is the best forum for pursuing detailed work on limiting the use of the bag. The need to prevent abuse of the bag for the illicit importation of firearms, explosives and drugs was expressed by the UK representative in the Sixth Committee of the UN General Assembly in November 1984 with a view to further study by the ILC.

48. Whatever measures it may prove possible to achieve internationally to curb abuse of the bag, the Government remain ready to deal promptly and firmly with any exceptional cases. For instance, where the evidence is good that the contents of a bag might endanger national security or the personal safety of the public or of individuals the Government will not hesitate to take the necessary action on the basis of the overriding right of self defence or the duty to protect human life. This latter consideration applied in the case of the attempted abduction of Mr Umaru Dikko and would have done so even if the crate in which he was found had in fact constituted a diplomatic bag. We note that the Committee welcomed this.

49. The Government have meanwhile taken administrative measures to tighten up safeguards within the Vienna Convention against abuse. Article 27.4 states that "the packages constituting the diplomatic bag must bear visible external marks of their character". In October 1984 diplomatic missions in London as well as HM Customs & Excise were given revised clarification of our rules on the identification (including labels and seals) and the handling of foreign diplomatic bags. These rules, which reflect international law and practice, are being rigorously applied in the UK and ensure that we are able to check the official origin and endorsement of all items purporting to be diplomatic bags.

/50. Scanning of Bags

50. Scanning of Bags The Government have given detailed and careful study to the arguments in favour of scanning and to the Committee's recommendation that we should be prepared to scan bags on specific occasions if in our judgment the need arises (paras 29-33). There is no reference to scanning in the Vienna Convention. In our view this does not rule it out, though it is arguable that any method for finding out the contents of a bag is tantamount to opening it, which is illegal. Since however we do not regard scanning as unlawful we have considered whether it would provide an effective and practical solution to the problem of abuse of diplomatic bags. We have also taken into account the risk of retaliation against our own bags.

51. Scanning could in theory deter some abuse, especially if a threat to scan were made explicit. When carried out it might also detect the outlines of certain articles that could provide grounds for suspicion. Those grounds would however need to be extremely strong to justify moving to the further step of requesting a search. Moreover a determined sending state could in particular instances take steps to disguise suspect contents. Thus scanning in itself would only be of limited practical value. It might reveal a problem but it could not solve it. These limitations are widely recognised internationally.

52. A major disadvantage of scanning is that it would make our own bags vulnerable to generalised and indiscriminate challenge. For security reasons we could not allow the protection of our bags to be impaired. These reservations are shared by many other Governments and international opposition to the introduction of scanning would be considerable.

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The element of uncertainty and the potential disruption that could be caused, either by retaliatory action or by a widespread introduction of such a practice, could seriously undermine our freedom of communication.

53. Because scanning would not be a wholly effective procedure and because of the consequences for our own bags the Government have decided against the introduction of scanning as a matter of routine. We accept however the Committee's view that there may be circumstances in which it may be helpful. We will therefore be ready to scan any bag on specific occasions where the grounds for suspicion are sufficiently strong.

Individual cases would require specific authorisation from the FCO and would be treated strictly on their merits. A representative of the sending state would be notified of an intention to scan a particular bag and be notified to be present. Should the sending state not wish the bag to be scanned it would be required to return the bag to the originator.

54. Recording Size and Weight of Bags The Committee suggested that there was no reason why records should not be kept of the size or weight of diplomatic bags entering the country in the care of a diplomatic courier or airline pilot and recommended that this henceforth be done (para 35).

55. The Government do not believe that keeping records of this sort would be effective in providing additional information that would enable a pattern to be established for the purposes which the Committee have in mind. For instance firearms or drugs or other illicit items can be concealed in relatively small bags. The weight and size would thus be irrelevant. There are good operational reasons for heavy items such as transmitting equipment to be sent at irregular intervals thus creating an irregular pattern of size and weight of bags. Sending states could in any case deliberately change the patterns.

56. Under present arrangements all incoming diplomatic bags must be presented to a Customs & Excise Officer before removal from the place of importation. HM Customs & Excise have indicated that in practical terms it would be possible to carry out the additional task of recording the size and weight of each bag, but any such requirement would be administratively cumbersome and it would be difficult to determine patterns on which any further action could usefully or effectively be based. It would also have to cover both accompanied and unaccompanied bags. The Government however accept that it could be useful to arrange for the recording of the weight and size of individual bags in certain circumstances or for limited periods. We will be ready to take such action where there are specific grounds for doing so.

/Immunity of Diplomats from Jurisdiction

Immunity of Diplomats from Jurisdiction

57. The Government have reviewed carefully the application in the UK of the provisions of the Vienna Convention relating to immunity from criminal and civil jurisdiction. In particular the statistics on alleged serious offences by diplomats and the criteria for handling individual cases have been closely examined. We have also noted the Committee's views (paras 39-44).

58. The Vienna Convention on Diplomatic Relations substantially limited the immunities formerly enjoyed within the UK by staff of diplomatic missions. (Under previous English law, the Diplomatic Privileges Act 1708, complete immunity from all criminal and civil jurisdiction was given to all members of missions, including domestic service staff and to private servants). The tone is set in the Preamble to the Convention which states that: "the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states". Article 29 provides that "the person of a diplomatic agent shall be inviolable". The concept of inviolability covers inter alia immunity from "any form of arrest or detention". A diplomatic agent is also immune from "the criminal jurisdiction of the receiving state" and, with exceptions in regard to certain private matters, from its "civil and administrative jurisdiction" (Article 31.1)

Moreover similar immunities are enjoyed by "the members of the family of a diplomatic agent forming part of his household" provided they are not nationals or permanent residents of the receiving state. These immunities persist when the appointment ends until the diplomat leaves the country or has had a "reasonable period" in which to do so, even in the case of armed conflict.

59. Members of the administrative and technical staff and their families also enjoy personal inviolability and the same immunities except that their immunity from civil jurisdiction does not apply to "acts performed outside the course of their duties". Members of the service staff have immunity only "in respect of acts performed in the course of their duties".

60. Statistics were provided to the Foreign Affairs Committee (and are published in their report) on alleged serious offences by persons entitled to diplomatic immunity in London for which, in the absence of that immunity, charges would have been brought. For these purposes the Home Office defined as a "serious offence" any that would in certain circumstances carry a maximum penalty of six months or more imprisonment. Of the 546 such offences alleged to have been committed in the 10 years from 1974 to May 1984 some 40% were for theft (mainly shoplifting) and another 40% were road traffic offences (mainly driving under the influence of drink). In the period January 1982 to May 1984 there were 123 such cases. 62, ie just over 50%, were road traffic offences. 41, ie 33%, were theft (mainly shoplifting) of which 30 involved dependants (wives and children). Since the cases were not brought to court the offences cannot be regarded as proven. The vast majority would have been unlikely to lead to any custodial sentence, let alone six months imprisonment. They resulted in 24 withdrawals of the diplomat from post at the request of the Foreign and Commonwealth Office, plus a further 9 following our representations or on the initiative of the Head of Mission. In a few of the cases the same person committed more than one offence.

61. Alleged cases of serious offences involving diplomats should be kept in perspective. As the Committee noted, they are comparatively small in percentage terms. For instance in 1983, the last complete calendar year for which statistics are available, the 15,000 or so persons entitled to diplomatic immunity for acts of a personal nature were allegedly responsible between them for 59 serious offences. These included:

(a) 33 road traffic offences, of which 30 were for driving under the influence of drink or drugs (about 1 in 500). The total number of persons found guilty of drink-driving offences in England and Wales in 1983 was 98,016;

(b) 16 theft, of which 14 were shoplifting (about 1 in 1000). The total number of shoplifting cases in England and Wales in 1983 was 235,512, including around 25,000 in the London Metropolitan area. 13 of the 14 such offences involving persons entitled to diplomatic immunity were committed by dependants, many of them juvenile. The amounts involved were in most cases petty, often less than £20. If they had involved non-entitled persons many of these cases would be likely to have resulted in no more than a conditional discharge or at most a minor fine.

62. Of course, criminal offences by those entitled to immunity and serving in a representative capacity cannot be condoned. The main abuse lies, not so much in the comparative number of alleged offences (which is small) or in their relative gravity, but in the reliance on immunity to protect individuals for offences without any obvious connection to the efficient performance of the functions of a diplomatic

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mission. This applies to most cases involving dependants as well as to many particular types of case, especially theft from shops. However claims to immunity in doubtful cases are seldom tested in court, eg where dependants are involved or where the person concerned might be found to have permanent resident status (and therefore no entitlement to immunity).

63. Guidelines for practice in the UK were set out in the following terms in the report on Diplomatic Immunity presented by the then Secretary of State for Foreign and Commonwealth Affairs to Parliament in 1952:

"...If a person possessing diplomatic immunity is alleged to have committed a criminal offence and there is a prima facie case which, in the ordinary way, would lead to the institution of a prosecution, the Foreign Office approaches the foreign mission concerned and, unless the offence is such that it is considered that an admonition by the Head of the Mission is sufficient, the Foreign Office requests a waiver of immunity in order that the case may be tried, on the footing that, if the immunity is not waived, it may be impossible for the Foreign Secretary to continue to accept the individual concerned as a person possessing diplomatic status in this country".

of seeking a waiver, or, in appropriate cases, the withdrawal of the official concerned

The practice has been consistently followed in subsequent years. All missions have been treated on a similar basis.

64. In each case the normal procedure is to take into account the strength of available evidence (usually from detailed police reports), the degree of gravity of the alleged offence, whether it was a first or subsequent one, aggravated for example by /violence

violence or injury or committed by a dependant, the likely penalty which an offence would have received in the absence of immunity, the recommendation of the Home Office, legal advice (where appropriate) and any other relevant considerations.

65. A diplomat is not able to waive his own immunity. Waivers can be granted only by the sending state, which means that even a Head of Mission will normally consult his home Government. In drink/driving cases a waiver, even if granted, will come too late to allow the necessary medical evidence for conviction to be obtained. A person entitled to diplomatic immunity cannot because of his inviolability under Article 29 be required to undergo a breath test or other medical examination.

66. In view of the nature and extent of abuse, we have examined whether it would be feasible (or even desirable) to obtain agreement either internationally or bilaterally to restrict diplomatic immunity to cover only actions performed in the course of official duties (on the lines of the Vienna Convention on Consular Relations), or alternatively to exclude certain types of offence. We have however found no support within the European Community or elsewhere for the idea of bilateral or limited mutual agreements to waive immunity either generally or in specific cases. There would in any case be a risk that a restriction on immunity could in certain countries be exploited for political or retaliatory purposes against British diplomats and communities overseas.

67. We have therefore implemented the only realistic alternative. That is to introduce an improved and more detailed code of practice based on a strict application of the measures available under the existing provisions of the Vienna Convention. The main objective is to achieve a better standard of behaviour and a reduction in the number of offences for which immunity can be claimed. In practice this has

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meant a tightening of the criteria and their application in the handling of individual cases, and specific warnings to missions and individual diplomats about the consequences.

68. Heads of Mission were informed in August 1984 of the statement by the Secretary of State for Foreign and Commonwealth Affairs to the Foreign Affairs Committee of 18 July that "it would be right in future to expect and to apply more stringent standards". They were in particular asked for cooperation in waiving immunity or arranging for the withdrawal of any members of staff who may be

/responsible

responsible for serious offences. In accordance with the Committee's recommendation (para 44), specific guidance is ^{new} being issued to all diplomats newly appointed to London on the attitude likely to be taken in the event of any breach of UK laws and regulations, including driving and shoplifting offences. They are asked to ensure that dependant members of their families are aware of this guidance. It has also been *brought to the attention of* existing staff of diplomatic missions.

69. As a general rule espionage and incitement to or advocacy of violence require an immediate declaration of persona non grata. Those involved in violent crime or drug trafficking are also declared persona non grata. In addition the following categories of offence normally lead to a request for withdrawal in the absence of a waiver:

/unless a waiver of immunity is granted.

- (a) firearms offences;
- (b) rape, incest, serious cases of indecent assault and other serious sexual offences;
- (c) fraud;
- (d) second drink/driving offence (or first if aggravated by violence or injury to a third party);
- (e) other traffic offences involving death or serious injury;
- (f) driving without third party insurance;
- (g) theft including large scale shoplifting (first case);
- (h) lesser scale shoplifting (second case);
- (i) any other offence normally carrying a prison sentence of more than 12 months.

The criteria for dealing with alleged offences are applied with both firmness and discretion, but not automatically. Full account is taken of the nature and seriousness of the offence and any inadequacies in the evidence.

70. Reminders have regularly been sent to missions in recent years on regulations relating to the import, acquisition, possession and use of firearms and the grave view that is taken of any deliberate breach. In June 1984 missions were warned that a breach would normally result in a request for withdrawal of the offender. They were also told that firearms certificates would not be issued for weapons for use by security staff of missions or personal protection of individuals. They are well aware of the role of the Diplomatic Protection Group and the care taken by the Government to fulfil their responsibility to provide appropriate security protection.

71. The application of more stringent standards together with the clarification of guidelines and criteria should lead to a reduction in the number of serious offences involving diplomats and members of their families. The onus is on missions and individuals to respect the basic ground rules or face the consequences. Where a diplomat is transferred because of involvement in a particularly serious criminal offence, the Government will also consider the possibility of reducing a mission's size with regard to the criteria already set out in para 31.

72. A serious view is also taken of any reliance on diplomatic immunity from civil jurisdiction to evade a legal obligation, or to impose on another party to a dispute the person's own view as to liability. Many difficulties over civil claims however arise because of a dispute as to liability or a failure to secure remission of necessary funds from overseas. Again each case has to be treated individually, but the Foreign and Commonwealth Office remain ready to make representations calling for a waiver of immunity or for private arbitration where immunity from civil jurisdiction has prevented settlement of an apparently valid claim and where a direct approach to the Head of Mission has yielded no result.

73. UK staff serving overseas are expected to respect the laws and regulations of the receiving state in accordance with Article 41 of the Convention. The Government would not maintain diplomatic immunity from criminal jurisdiction in cases where a waiver would be without prejudice to the work of the mission and the fair treatment of the individual.

Parking Offences

74. The Government are seriously concerned at the high level of fixed penalty notices (ie parking tickets) automatically cancelled on grounds of diplomatic immunity. Detailed statistics for 1981-1983 were given on 13 February 1985 in a Written Answer by the Parliamentary Under-Secretary of State at the Home Office, Mr Mellor. In 1983, the last complete calendar year for which figures were then available, they amounted to 102,179. The 1984 figure, when confirmed, is likely to be in the region of 109,000. Figures for 1983 and 1984, which are double those for 1979 and 1980, have reached unacceptable levels. (The proportions have also risen. In 1982 2.9% of the overall total of parking fines in Greater London was incurred by diplomats. In 1984 this was 4.3%). At least half relate to official cars.

75. Numerous methods of dealing with the problem have been considered in recent years. Some have been rejected on legal grounds and others for practical reasons. Others again have been put into effect but their success has only been limited.

76. Heads of Mission have repeatedly been urged to recognise the special problems that exist in London and to ensure that both their official drivers and their diplomatic staff obey the parking regulations. They have been warned of the disrepute brought upon the Diplomatic Corps as a result of a widespread flouting of these regulations, of the /inconvenience

inconvenience caused to local residents in predominantly residential areas such as Kensington, Knightsbridge and Belgravia where the offices of many diplomatic missions are situated, and of the fact that British diplomats serving overseas are expected to pay their fines. Some missions, because of their physical location, have particular difficulties. Some incur very few fines and a small minority require their staff to pay. Regrettably however requests for cooperation have been widely disregarded.

77. In May 1983 wheel-clamps were introduced on an experimental basis in certain parts of Central London. Our initial view was that the wheel-clamping of a car which could be identified by its number plate as belonging to a diplomatic mission or a diplomat was not ruled out by the wording of Article 22.3 of the Vienna Convention, which states that "... the means of transport of the mission shall be immune from search, requisition, attachment or execution". It became clear however that clamping (unlike towing away) is a measure which must be regarded as penal in intent and effect, and thus contravenes Article 31.1 of the Vienna Convention, which provides that a diplomatic agent shall enjoy immunity from criminal jurisdiction of the receiving state. The Minister of State for the Home Department, Lord Elton, therefore announced in the House of Lords on 12 December 1983 that the clamping of cars belonging to diplomats would be discontinued.

78. At the same time Lord Elton announced a number of administrative measures whose purpose was to control acquisition of duty-free vehicles but which also had the effect of reducing the number of cars on the streets with number plates indicating an entitlement to full diplomatic immunity. When these measures have taken full effect, there should be about 900 or 16% fewer such cars on the streets than hitherto. Duty-free cars belonging to persons not entitled to personal immunity from criminal jurisdiction are liable to incur parking fines and to be wheel-clamped if illegally parked.

79. In addition at least 200 cars belonging to diplomats have been towed away every year over the past few years before wheel-clamping was introduced in 1983. Since then the figures have been somewhat lower. Where the purpose is to relieve obstruction or danger towing ^{/away is} entirely justified under the Vienna Convention. In so far as resources permit this policy will be vigorously pursued.

80. The Government are determined to reduce very substantially the present level of illegal parking by diplomatic vehicles. In view of the limited results of earlier methods and the legal obstacles to wheel-clamping, the FCO have notified Heads of Mission in London that persistent and deliberate failure by individual diplomats to respect parking regulations and to pay fixed penalty notices will henceforth call into question their acceptability as members of diplomatic Missions in London. Similar considerations will also apply to drivers of official cars. From 1 May 1985 detailed records of unpaid parking tickets incurred by all cars with diplomatic registration plates, both official and private, will be kept. Where necessary, particular cases will be drawn to the personal attention of Heads of Mission with a warning about the possible consequences. Further unpaid parking tickets incurred by individual cars will lead to a request for the transfer or the withdrawal of the offender.

/Matters

Matters Relating to the Libyan Peoples Bureau

81. The Government have carefully studied the Committee's observations

On matters relating to the FCO's handling of relations with the Libyan Peoples's Bureau 1979-1984 (paras 68-105). The Committee concluded (para 127 (6):

- "(i) we doubt the wisdom of resuming normal relations with the Bureau in June 1980 in the absence of a clear notification by the Libyan authorities of a Head of Mission;
- (ii) even if, as seems questionable, the view that the Bureau was engaged in proper diplomatic functions in June 1980 was reasonable, we consider that in the ensuing three and a half years that initial view became untenable; we conclude that the Government should at some stage in this period have exercised their right under Article 11 of the Convention to limit the size of the mission;
- (iii) as the failure to nominate a head of mission - initially at all and later in writing - following the takeover by revolutionary students was deliberate and wilful, it was as a matter of policy undesirable to have treated the Bureau as a diplomatic mission between February and April 1984 and even occasional contacts with the Bureau should have been dependent upon notification being received;
- (iv) following the takeover by the Committee of Revolutionary Students in February 1984, the Government of Libya should have been told much more firmly that if within a brief specified period of time a head of mission was not designated in writing, not only would there be no dealings with the Bureau, but the Bureau buildings would within a reasonably short period cease to be recognised as premises of a mission under Article 22 of the Convention".

82. The Government believe that some of these points have been made with hindsight

and are based on judgments formed on evidence not available at the relevant time. Some do not fully reflect the evidence available. Specifically:

(i) the decision to recognise one official as equivalent to a Head of Mission was taken in full consultation with several other Western European countries. The Government had no proof of involvement by the Libyan Peoples Bureau in the 1980 incidents. When the Head of the Bureau commented on them to the press he was immediately declared persona non grata. The Bureau could not in practice have been closed without breaking diplomatic relations. The consequences for the large British community in Libya (some 8,000) as well as British commercial interests had to be taken into account;

(ii) in the following three and a half years there were no further incidents of comparable gravity to those of 1980 which would have provided a clear justification for measures against the Bureau. There was no single point in time at which the Government could reasonably have taken a decision to limit the size of the Mission because of unacceptable activities, even if it had been accepted that the imposition of a ceiling rather than declarations of persona non grata was the appropriate response to improper activities by individuals;

(iii) the FCO did not deal with the new Committee between February and April 1984 or accept them as diplomats. No notifications of diplomatic appointments were accepted after 18 February. There was no reason to terminate acceptance of those whose appointments had been duly notified to the FCO prior to 18 February and who apparently continued to carry out diplomatic functions. The failure to nominate a Head of Mission was a matter of concern but there was no reason to believe that this was deliberate or wilful. It was not in itself evidence of a failure to perform diplomatic functions. Repeated attempts were made to seek clarification of the position. The British Ambassador in Tripoli finally received oral notification on 9 April of Mr Fituri as Head of Mission;

(iv) the FCO were concerned at the failure to nominate a Head of Mission and in response confined their dealings with the Bureau to contacts on administrative and Consular matters and representations by the Government about the bombing incidents on 10/11 March! The situation had no precedent and drastic action, including the setting of a deadline, might have precipitated a hostile Libyan reaction with consequences for the large British community in Libya. It was not legally possible to cease to recognise the Bureau buildings as premises of the Mission while we remained in diplomatic relations with Libya and the buildings were being used for the purposes of the mission.

(as indicated in the FCO letter to the Committee of 22 November 1984 which was printed as Appendix II of their Report).

83. On matters relating to the FCO's handling of events after 17 April 1984 the Committee concluded (para 127(7):

- (i) whatever answer is given to the question of whether self defence is a concept applicable to the circumstances of St James's Square, it could not have acted as a lawful basis for the forcible entry of the Bureau premises;
- (ii) despite the outrage that had occurred, the bags in principle remained inviolable;
- (iii) the decision not to search the Libyan bags was not directed by the requirements of the Vienna Convention (as was commonly supposed), but by the requirements of political judgment; we do not dissent from the judgment that was made;
- (iv) the searching of those leaving the Bureau was justified;
- (v) we agree with the Government's assessment of their obligations in respect of 5 St James's Square following its evacuation on 27 April 1984".

The Government /^{accept} the Committee's conclusions.

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The Attempted Abduction of Mr Umaru Dikko

84. The Government have studied the Committee's observations on the attempted abduction of Mr Umaru Dikko (paras 106-113). The Committee concluded (para 127(8)):

"(i) we welcome the Government's acceptance that the inviolability of the diplomatic bag cannot take precedence over human life;

(ii) the Government are, overall, to be commended for their swift and robust handling of the Dikko affair".

The Government / ^{accept} the Committee's conclusions.

/Summary of Conclusions

Summary of Conclusions

85, The Government share the concern expressed by the Committee on the abuse of diplomatic immunities and, following a* the Vienna Convention, have accepted all the major recommendations in their Report. The main conclusions are as follows:

(a) the Government agree with the Committee that it would be wrong to regard amendment of the Vienna Convention as the solution to the problem of abuse of diplomatic immunities in view of the difficulties of achieving any restrictive amendment and the doubtful net benefit to the UK of so doing (para 11);

(b) the Government appreciate the Committee's welcome and support for the efforts made to seek close cooperation with Western Governments and for the progress so far achieved. They will continue to press for further improvement in international cooperation (para 13(a)) and, where appropriate, work for modifications to existing international rules to restrict abuse of immunities (para 13(b));

(c) the Government have implemented a firmer policy towards application of the Vienna Convention as recommended by the Committee (para 17);

(d) the Government have revised and strengthened their requirements and procedures on the notification of staff of diplomatic missions (para 28);

(e) the Government have used their discretion in the past year to limit the size of individual missions and will continue to do so on a case by case basis (para 30);

/(f)

*full review
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(f) the Government have taken administrative measures to deal with abuse of diplomatic premises and to limit the extent of mission premises in accordance with international law and practice (para 39 (a)-(c)). [Proposals for legislation to control in exceptional circumstances the acquisition and disposal of premises are under consideration (para 39 (d))];

(g) the Government accept that demonstrations outside diplomatic missions should be allowed so long as they do not imperil the safety or efficient work of the mission (para 39 (e)). Consultation by the police with the Home Office and FCO on any change of policy over the policing of demonstrations will be improved (para 40);

(h) the Government share the Committee's concern on the abuse of diplomatic bags. Any formal restriction on the content and use of bags would be difficult to achieve and not necessarily desirable* (paras ⁴³⁻⁴⁶). Prompt and firm action will be taken where the evidence is good that the contents of a bag might endanger national security or the personal safety of the public or of individuals (para 48). Administrative measures on the identification and handling of bags have been tightened (para 49);

(i) the Government are ready to scan bags and to record their weight and size where there are specific grounds for doing so but not as a matter of routine (para 53 and 56);

(j) the Government have clarified the guidelines on breaches of criminal law by diplomats and their families and the criteria for dealing with them. More stringent standards are being applied (paras 67-71);

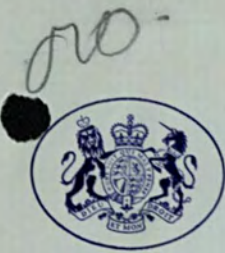
/(k)

*because of the reciprocal implications for the security of British bags

- (k) the Government are taking stronger action to deal with parking offences (para 80);
- (l) the Government accept some, but not all, of the Committee's conclusions on events relating to the Libyan Peoples Bureau (paras 81-3);
- (m) the Government accept the Committee's conclusions on the handling of the attempted abduction of Mr Umaru Dikko (para 84).

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28 March 1985

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Dear Tim

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NR.
Nicks
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P. x. arthur

WHITE PAPER: REVIEW OF THE VIENNA CONVENTION

As you will no doubt be aware we propose to publish as a White Paper in mid-April a review of the Vienna Convention and the FAC Report on Immunities and Privileges. The draft has not yet received the final approval of the Secretary of State.

I should be grateful if you, and those to whom I am copying this letter, would confirm that there is no objection to publication.

Johns
Phil

P H Johnson
Parliamentary Clerk

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